

Docket No: WATZL
Appl. No: 10/801,408

REMARKS

With regard to the requirement for restriction which is the only point raised in the Official Action, Applicant hereby provisionally elects to prosecute Invention II, covering claims 6-11, with traverse, and reserves the right to file a divisional application or to take such other appropriate measures as deemed necessary to protect the invention of Invention I.

Applicant believes that claims 1-5 are so closely related to claims 6-11 that they should remain in the same application to preserve unity of invention and to avoid any possibility of a charge of double patenting arising at some later date. Please note, the content of non-elected independent method claim 1 is essentially identical to the elected independent apparatus claim 6, except for the addition of "means" in claim 6. Moreover the examination burden would not be lessened by the division because the same prior art is relevant in examining both inventions in one application and there is no need to insist upon restriction.

It is believed that the Examiner is trying to draw too fine a line of distinction and that when all the various facts are taken into account, all claims on file should be examined on the merits. In any event, Invention II and hence claims 6-11 are entitled to action on the merits.

With regard to the requirement for election, required by the Examiner as a consequence of the election of the invention of Group II, Applicant hereby provisionally elects the species of 5a, as covered by claim 6, 7, 8, 9, with at least claim 6 being generic.

With regard to claims 10 and 11 constituting the other species, applicant does not waive any of his rights therefore or abandon such subject matter.

In general, applicant wishes to note that the Examiner's request for election according to paragraphs 4 and 5 of the Office Action is confusing and allows applicant only to speculate what is, in fact, required here.

Paragraph 4 relates to both Inventions I or II and requests an election between two species A and B. However, both these species relate to method

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steps so that an election of the apparatus claims cannot result in an election between species A and B. Therefore paragraph 4 has been interpreted to mean "Upon election of invention I" only.

Paragraph 5 refers back to paragraph 4 and appears to require an election of a subspecies between the subject matter of apparatus claims 9, 10 and 11. However, none of the species A and B can be elected upon election of Invention II, as stated above. Therefore, paragraph 5 has been interpreted to refer to an election of invention II and election of one of the species set forth in claims 9, 10 and 11.

Accordingly, since applicant elected Invention II and further elected the species 5a for further prosecution, applicant has fully and completely responded to the Official Action and thus has made the required elections, this application is now in order for early action at least on the merits of claims 6-9.

Respectfully submitted,

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